

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JUSTIN MOSS,

Plaintiff,

v.

JILL KOLLMAN et al.,

Defendants.

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ORDER

Case No. 25-cv-213-jdp

On March 31, 2025, I ordered plaintiff Justin Moss to pay \$88.86 by April 18, 2025, for this case to proceed. Dkt. 4. Now plaintiff has filed two motions: one to allow him to pay the initial partial payment with funds in his release account, dkt. 5, and one to waive the initial partial payment, dkt. 7. Moss offers the same rationale for each motion: that he has submitted multiple requests to disburse the funds, and that prison staff are interfering with his requests. Plaintiff's motions will be denied for the following reasons. First, plaintiff does not explain how his problem would be solved by using release account funds. Second, the PLRA does not permit me to waive the initial partial payment when plaintiff has the means to pay.

An inmate who files a lawsuit under the *in forma pauperis* statute, 28 U.S.C. § 1915, must pay the \$350 filing fee, first by making an initial partial payment under § 1915(b)(1), and then by paying the remainder of the filing fee in monthly installments under § 1915(b)(2). Under § 1915(b)(1), "[t]he court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of— (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint." In other words, I have no discretion to waive the filing fee, in whole or in part, when plaintiff has the means to pay.

ORDER

IT IS ORDERED:

1. Plaintiff's motion to use release account funds to pay the initial partial payment of \$88.86 is DENIED. His motion to waive the filing fee is also DENIED, as noted above. Plaintiff may have until May 23, 2025, to submit a check or money order payable to the clerk of court in the amount of \$88.86. If presented with a request to disburse the funds, officials at Oshkosh Correctional Institution must allow plaintiff to withdraw \$88.86 from his inmate accounts to make the payment. If plaintiff does not have sufficient funds in his regular inmate account, then prison officials will first draw funds from his regular account and then from his release account to pay any remaining portion of the initial partial payment.

2. No further action will be taken in this case until the clerk's office receives the initial partial payment and the court has screened the complaint under the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2). Once the screening process is complete, the court will issue an order on leave to proceed.

3. If plaintiff fails to make the initial partial payment by May 23, 2025, or fails to explain why he cannot make the payment, then I will assume that plaintiff wishes to withdraw this action voluntarily. In that event, the case will be dismissed without prejudice. If plaintiff submits the initial partial payment within 30 days of dismissal, the case will be reopened. The court will not reopen the case after 30 days unless plaintiff shows that he is entitled to relief under Federal Rule of Civil Procedure 60(b).

Entered on this 29th day of April, 2025.

BY THE COURT:

/s/  
ANDREW R. WISEMAN  
United States Magistrate Judge